APPEAL NO. 032098
FILED SEPTEMBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 11, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on June 5, 2000, with a four percent impairment rating (IR) as certified in an amended report by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), and that the claimant had disability as a result of his compensable injury of _____, from June 9, 1998, through December 28, 1998, and from March 1, 2000, through May 22, 2000. The appellant (carrier) appeals the hearing officer's determinations on the issues of MMI and IR, contending that those determinations are not supported by the evidence and are against the great weight of the evidence. No response was received from the claimant. There is no appeal of the hearing officer's determination on the disability issue.

DECISION

Affirmed.

The claimant sustained a compensable injury to his right ankle on _____. He continued to work modified duty until June 9, 1998, and then was off work. The carrier's required medical examination doctor reported that the claimant reached MMI on October 13, 1998, with a two percent IR. The designated doctor initially examined the claimant on December 24, 1998, and reported that the claimant reached MMI on December 24, 1998, with a zero percent IR. As a result of his compensable injury, the claimant underwent an operation on his right ankle on March 1, 2000. The claimant's treating doctor reported that the claimant reached MMI on July 20, 2000, with a four percent IR. The Commission requested clarification from the designated doctor, and as a result of that request, the designated doctor reexamined the claimant and reported that the claimant reached MMI on June 5, 2000, which he noted was the statutory date of MMI, with a four percent IR.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Sections 408.122(c) and 408.125(e) provide that the designated doctor's report has presumptive weight, and the Commission shall base its determinations of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor's opinion.

The hearing officer found that the great weight of the other medical evidence did not overcome the presumptive weight afforded to the findings of the designated doctor's

amended findings of October 4, 2002, and concluded that the claimant reached MMI on June 5, 2000, with a four percent IR. The carrier contends that the designated doctor's original findings of a December 24, 1998, MMI date and a zero percent IR are correct, and that the designated doctor's amended report was invalid because it was based on the treating doctor's measurements in violation of Rule 130.6(f). While the designated doctor's amended report of October 4, 2002, does reference the four percent IR assigned by the treating doctor and expresses his agreement with that IR, the designated doctor's amended report of October 4, 2002, also reflects that he did perform a physical examination of the claimant and states that his evaluation was based on medical records, tests, and physical findings of the claimant. Thus the hearing officer could find, as she did, that the designated doctor amended the IR after he reevaluated the claimant. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision on the issues of MMI and IR is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

DANNY FLORES
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge